Supreme Court, U.S.
FILED

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No. _____

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

La Quetta M. Golden,
Petitioner.

v.

City of Gulfport, Mississippi, et. al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FIFTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

LA QUETTA M. GOLDEN
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Attorney and Petitioner

20 pp

QUESTION PRESENTED

Whether petitioner was discriminated against based upon her race and sex when respondents violated petitioner's federal civil rights and the equal pay act statutes since they failed to pay petitioner's salary equal to that of the caucasian male attorneys and when they terminated her employment and replaced her with a caucasian male attorney who had less experience.

PARTIES IN THE PROCEEDING

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

LA QUETTA M. GOLDEN
PETITIONER

VERSUS

CITY OF GULFPORT, MISSISSIPPI;
JIMMIE JENKINS; RICHARD ROSE;
GORDAN ALLEN, SR.; KIM SAVANT;
AND RICH DOMBROWSKI, CITY
COUNCILMEN, IN THEIR INDIVIDUAL AND
OFFICIAL CAPACITY; KEN COMBS, MAYOR,
IN HIS INDIVIDUAL AND OFFICIAL CAPACITY;
HARRY HEWES, CITY ATTORNEY, IN
HIS INDIVIDUAL AND OFFICIAL CAPACITY; AND
CAPACITY
RESPONDENTS

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EQUAL PAY ACT - 29 U.S.C. Section 201
TITLE VII of the 1964 Civil Rights Act-42 U.S.C. Section 2000e
42 U.S.C. Section 1981

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment of the Fifth Circuit Court of Appeals in this matter filed on July 11, 1997.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix 1 to the petition and is unpublished.

The opinion of the United States district court appears at Appendix 2 to the petition and is unpublished.

The opinion of the United States court of appeals appears at Appendix 3 to the petition and is unpublished.

JURISDICTION

The United States Court of Appeals filed its judgment on July 11, 1997. App. 1. A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 5, 1997, and a copy of the order denying rehearing appears at Appendix 3. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved in the case at bar include violations by Respondents of the Equal Pay Act (29 U.S.C. Section 201) and Title VII of the 1964 Civil Rights Acts (42 U.S. C. 2000 e) on the issues of racial and sexual discrimination.

STATEMENT

Your Petitioner alleges she was discriminated against by receiving lower wages as her male colleagues while she performed essentially the same duties having identical skills, efforts, responsibilities and work environment as her male colleagues. Petitioner further contends she was wrongfully discharged based upon her race, African-American and her sex, female.

Your Petitioner, at the time of the events complained of herein had been employed by the Respondent City of Gulfport for approximately seven months as the first female city prosecutor. Her professional training included graduation from *Thurgood Marshall School of Law* with a Juris Doctorate of Law Degree and a license to practice law in the State of Mississippi. During the course of her employment, Petitioner was the only female, only African-American within the legal department of the Defendant City of Gulfport. The Respondent City of Gulfport presently has within its legal department six Caucasian attorneys and three Caucasian judges. There aren't any female attorneys or minority attorneys working within the city's judicial system. At all times during her period of employment, Petitioner was fully qualified and competent to perform her tasks and was not the subject of any disciplinary actions. Yet, Petitioner was terminated from her employment and was replaced by a Caucasian male prosecutor who had less experience than Petitioner. Petitioner asserts that she was discriminated against by her immediate supervisor, Respondent Hewes; and the former mayor, Respondent Combs because of her sex and race and that the acts of these Respondents constituted "official policy" on behalf of Respondent City of Gulfport.

A. EQUAL PAY ACT ISSUE

Petitioner performed essentially the same job duties as her male colleagues, requiring equal skill, effort and responsibility, but was paid at a substantially lower rate of pay than her male colleagues in Respondent's legal department. (See Record, Vol. 1, pg. 87) To support her Equal Pay Act Claim, Petitioner presented the pay scale of Respondent City (See Record, Vol. I, pg. 199).

Petitioner was placed in a lower pay scale than her Caucasian male colleague. Upon her employment with Respondent City, Petitioner was placed in pay scale L which salary ranged from $33, 721-$43,138.08. Whereas, the Caucasian male attorney, James Halliday, was placed in a pay scale M which salary ranged from $38, 126.88- $48,817.44. Petitioner was placed in a pay scale with city directors who had Bachelor of Science Degrees or simply high school diplomas; whereas, Petitioner possessed a Juris Doctorate degree. Petitioner's qualifications, education and experience as an attorney should have been sufficient to place her in pay scale M along with Attorney Halliday.

Petitioner and Attorney Halliday possessed the same job title (Assistant City Attorney); both served as attorneys representing the City of Gulfport in both bench jury trials; both possessed the same educational and licensure requirements for their respective positions; both job descriptions were very similar; both jobs required the same education and experience. Petitioner was just as qualified as Attorney Halliday and had more supervisory responsibility, but received less wages. Petitioner further maintains that the other male prosecutors received less wages because they worked part-time. However, Attorney James Simpson, a part-time prosecutor, received a salary of $24, 000.00 per year. (See Record, Vol. II, pg. 542) Petitioner's salary was approximately $38,000.00 a year. Petitioner asserts that based upon a pro rata determination, if Attorney Simpson's salary was $24,000.00 per year as a part-time position, then her salary should have been comparable at $48,000.00 for serving in a full-time capacity. Attorney James Halliday's salary was approximately $42,000.00 a year which is within pay scale M.

During his depositional statement, Respondent Combs rendered several admissions. Respondent Combs admitted that Halliday's and Petitioner's skills were similar (See Record, Vol. II, pg. 569, lines 16-24). Respondent Combs further admitted that Petitioner was a qualified attorney. (See Record, Vol. II, pg. 573, lines 9-10)

Respondent Combs admitted that both Petitioner and Halliday possessed the same educational background. (Id, pgs. 562, 563, lines 20-25 a d 1-13 respectively) Finally, in Respondent Combs' sworn deposition

statement, he confirms that Petitioner's job title was essentially the same as Halliday's title (Assistant City Attorney). (See Record, Vol. II, pag. 564, lines 12-21).

Therefore, Petitioner presented sufficient evidence that she performed essentially the same job duties as her male colleagues, requiring equal skill, effort and responsibility.

In *Flory v. Salt Lake County Sheriff's Office*, 680 F. Supp. 1504 (1988) (See Record, Vol. II, pg. 575-576), this case involved a female supervisor who was paid less than her counterparts. Plaintiff alleged that the Defendants used the merit system to classify her male counterparts, and that this classification was based on gender.

The Court held that after Plaintiff pleads a prima facie case of gender discrimination in pay, Defendant has the burden of showing that disparity in wages between male and female employees is based on a valid merit system. The court defined a valid merit system as follows, to-wit:

> "must be an organized and structured procedure whereby employees are evaluated systematically according to predetermined criteria."

The court further held that the Fair Labor Standards Act is to be liberally construed in favor of the protected class. The purpose behind the act is to raise the wages of female workers so that their wages are the same as their male counterparts.

In the case at bar, the lower court held that Petitioner proved her prima facie case on the Equal Pay Act Claims. However, the Court further held that Respondents overcame their burden by articulating one of the four exceptions to the Equal Pay Act.

The court stated that Respondents based the pay differential on a factor other than sex. However, the factor which the court has relied upon (i.e., that the position held by Halliday has been traditional a higher paying position that the city prosecutor job) is factually incorrect. Based upon the

fact that the part-time prosecutor earned $24, 000.00 per year and Halliday earned $42,000.00 per year, the statement asserted by Respondents that Halliday's position pays more than the city prosecutor's position is factually incorrect. The inquiry becomes whether the Fair Labor Standards Act and the Equal Pay Act has been violated when a full-time prosecutor only received $38,000.00 a year; the full-time male attorney received $42,000.00 a year; and the part-time male attorney received $24,000.00 a year. Based upon these salaries, Petitioner maintains that Respondents have violated the Fair Labor Standards Act including the Equal Pay Act.

Therefore, based upon the foregoing, Petitioner strongly asserts that she has established her prima facie case of disparity in pay pursuant to the Equal Pay Act. Furthermore, the Respondents have not overcome Petitioner's prima facie evidence. Respondents have not articulated a legitimate reason for disparity in wages since Petitioner and Attorney Halliday were both full-time employees.

This issue of equal pay is of broad public importance. Females who work in these United States and more particularly within the City of Gulfport, Mississippi should believe that our judicial system will protect their rights in equal pay as afforded by federal statutes. Presently, the local Ministerial Alliance; the local chapter of the National Association for the Advancement of Colored People; and the public support Petitioner's efforts to stop discrimination against females and minorities within the city of Gulfport, Mississippi. Prior to 1993, the Respondent City has failed to hire female attorneys. Since Petitioner's unlawful termination in 1993, there hasn't been any hiring of female attorneys. This act alone violates and offends Title VII of the Civil Rights Act of 1964.

Petitioner respectfully believes a review of the issues and a reversal in the case at bar would send a strong message to a city that tolerates no diversity within its legal department.

B. RACIAL DISCRIMINATION

The United States District Court for the Southern District of Mississippi improperly denied Petitioner's claim of racial discrimination

pursuant to Title VII of the 1964 Civil Rights Acts.

In Petitioner's Amended Complaint, Petitioner alleged that she was a competent African-American female prosecutor who worked in a hostile environment. Petitioner further contended that she was not treated fairly or equally and received harsher disciplinary treatment than her male counterparts. (See Record Vol. I, pg. 81) Petitioner was the first female, first African-American to ever hold the prosecutor's position. Heretofore, all her predecessors have been Caucasian male attorneys.

The Court in its January 27, 1995 Memorandum Opinion held that Petitioner's Title VII claims should survive Defendants' Motion for Summary Judgment. (See Record, Vol. 1, pgs. 64-75) Consequently, in the court's July 25, 1996 Memorandum Opinion, the court held that Petitioner failed to establish that the proferred reason for her termination was pretextual. (See Record Vol. 2, pg. 703)

From February, 1993 until August, 1993, Petitioner performed her job as prosecutor competently and efficiently. This is evident from a letter written by Respondent Combs who wrote in July 26, 1993 stating Petitioner was doing an *outstanding* job as the city's prosecutor. (See Record, Vol. I pg. 187) This letter was written only one month prior to Respondent Hewes' August, 1993 recommendation to dismiss Petitioner for alleged *poor performance*. Respondents have failed to show what caused Petitioner's imminent termination within 30 days of receiving high commendations from Respondent Mayor Combs.

Next, Petitioner submitted her court record to rebut Respondent's allegation of poor performance. (See Record, Vol. II pg. 598) From February 1993 until August 1993, Petitioner was responsible for 70 jury trials. Of which four cases were dismissed; four not guilty verdicts were rendered and 62 cases were guilty pleas or guilty verdicts. From the city court case docket, Petition was responsible for 595 bench trials of which 81 cases were dismissed; 12 cases received not guilty verdict; and 502 cases received guilty pleas or guilty verdicts.

Petitioner attended all court appearances on both the local and appellate level during her tenure. During this time, Petitioner's supervisor, Respondent Hewes, never observed Petitioner in court and gave this admission during his deposition. Respondent Hewes further admitted in his sworn depositional statement that he terminated Petitioner based upon hearsay. (See Record, Vol. I pg. 579, lines 14-17 and Vol. I pg. 580, lines 15-24.)

The lower court itself cited *Richmond v. Board of Regents*, 957 F. 2d 595, 598 (8th Cir.1992); *Kizer*, 962 F. 2d at 612 in stating (" to meet burden of establishing a prima facie case of discriminatory discharge [Plaintiff] must show both that she was qualified for and satisfactorily performed the duties of her job.") (See Record, Vol.II, pg. 705).

Petitioner strongly contends that she has met her burden of proving and maintaining her prima facie case of racial discrimination. Petitioner has shown through sworn affidavits and sworn depositional statements of Respondent Combs that she was a qualified attorney. (See Record Vol. II, pg. 568, lines 21-25) Furthermore, Petitioner never received any derogatory evaluations indicating that her performance was unsatisfactory. Petitioner has only received commendations and high praises from Respondent Combs which again rebutted Respondents' allegations of poor performance. Conversely, Respondent Hewes did in fact render an evaluation upon Attorney James Halliday. (See record Vol. II, pg. 549-551) Mr. Halliday's performance was rated "below standard", yet Respondent Hewes did not terminate this Caucasian male attorney. Irrespective to Mr. Halliday`s poor performance rating, Respondent Hewes rewarded Attorney Halliday by recommending that this Caucasian male attorney receive a 2.5% raise (id., pg. 550)

Petitioner strongly asserts that this fact along constitutes disparate treatment in the work place. Petitioner, an African American female attorney was terminated for alleged unsubstantiated *"poor performance."* However, Attorney James Halliday was not terminated for his actual poor performance rating. Attorney Halliday received more money in salary to award his poor performance. Respondents could not articulate any legitimate justification for this type of disparate treatment.

Petitioner has sufficiently proven that she was discriminated against based upon her race.

In *Josey v. Hollingworth*, 996 F. 2d 632 (3rd Cir. 1993), the Court held that to make a prima facie showing of racial discrimination, Plaintiff must demonstrate that (1) he belongs to a racial minority; (2) he was qualified for the position; (3) he was discharged; and (4) other employees not in a protected class were treated more favorably. In the case at bar, Petitioner has met this burden.

In *Josey*, the court further stated that the Supreme Court has acknowledged that "there will seldom be eyewitness testimony as to the employer's mental processes. "Where direct 'smoking gun' evidence of discrimination is unavailable, this court has found that the proper iniquity is "whether evidence of inconsistencies and implausibilities in the employer's proffered reasons for discharge reasonable could support an inference that the employer did not act for non-discriminatory reasons, not whether the evidence necessarily leads to [the] conclusion that the employer did act for discriminatory reasons," (See *Graham v. F.B.Leopold Co.*, 779 F. 2d 170, 173 (3rd Cir. 1985)

The court further held that it has found that factors such as the defendant's credibility, the timing of an employee's dismissal, and the employer's treatment of the employee could raise an inference of pretext which would make summary judgment for the employer inappropriate.

In the case at bar, Respondent Mayor Combs wrote a letter acknowledging that Petitioner was doing an "outstanding" job in her performance. However, less than one month later, Respondent Combs signed a Notice of Termination stating Petitioner had poor job performance. The timing of Petitioner termination along with the inconsistency could raise an inference of pretext which could make summary judgment for the Respondents inappropriate. Petitioner seeks a reversal since the ruling of the lower courts are inconsistent with prior Supreme Court ruling and applicable federal statutes.

REASONS FOR GRANTING THE PETITION

I. THE DECISION BELOW IS IN DIRECT CONFLICT WITH DECISIONS OF OTHER CIRCUITS

Petitioner respectfully requests this Honorable Court to grant this petition for a writ of certiorari because the ruling of the 5th Circuit Court of Appeals is in direct conflict with decisions of other circuits.

The 5th Circuit Court of Appeals and the United States district courts' dismissed Petitioner's racial discrimination claim when Petitioner had properly met her burden of proof as established by the *Josey v. Hollingsworth* and *McDonnell Douglas v. Green* cases. Furthermore, *Josey* cited the Supreme Court in rendering its conclusion that Plaintiff in *Josey* had been discriminated based upon his race.

Petitioner further maintains the lower courts erred when they dismissed Petitioner's Equal Pay Act Claim. Petitioner relied upon *Flory* to establish that she was paid less than her male colleagues for performing essentially the same job duties.

It is of national importance for the high court to render its opinion of the issues of race discrimination and sex discrimination pursuant to Title VII of the 1964 Civil Rights Act and the Equal Pay Act. Petitioner brings this action for other females in this nation and in Gulfport, Mississippi who are receiving less wages than their male colleagues and/or who were terminated based upon their race and/or sex.

Petitioner strongly asserts that Respondents failed to diversify their work force. Since Petitioner's wrongful termination, Respondents have failed to employ any African-American attorneys to its staff within the legal department. This is a very important issue since the city of Gulfport, Mississippi has within it area at least 12 percent African-American within its city; yet, no African-Americans are employed within its legal department. To maintain a segregated municipality is contrary to our United States Constitution and the other federal laws enacted to assure

fairness and equality to every citizen irrespective to their race, color, sex, national origin, creed, religion or disability.

II. THE DECISION BELOW IS INCONSISTENT WITH *MCDONNELL DOUGLAS CORPORATION VERSUS GREEN*, A UNITED STATES SUPREME COURT DECISION CONCERNING THE IMPORTANT ISSUE OF RACIAL DISCRIMINATION IN THE WORKPLACE.

Plaintiff asserts that the decision below is inconsistent with *McDonnell Douglas Corporation v. Green*, 41 U.S. 792, 802 (1973). Plaintiff must initially establish a prima facie case of discrimination, in the absence of direct proof. Also see, *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 252-253 (1981). If a prima facie case is established, the Defendants must articulate legitimate non-discriminatory reasons for Plaintiff's termination. *McDonnel Douglas*, supra; *Burdine*, supra. Thereafter, Plaintiff must prove that the reasons advanced by the Defendants are either untrue, or unworthy of belief, as to a pretext to hide, or mask, discrimination. *McDonnell Douglas*, supra; *Burdine*, supra; and *St. Mary's Honor Center v. Hicks*, 509 U.S. 502,507 (1993); and *United States Postal Service Board of Governors v. Aikens*, 460 U.S. 711, 715 (1983).

To establish a prima facie case on the bases of race (African-American) and/or sex (Female), Plaintiff must establish by a preponderance of the evidence, that she: (1) is an African-American female; (2) was qualified for her position; (3) was terminated from her position and (4) was replaced with a Caucasian male who was less qualified than Plaintiff. *McDonnell Douglas*, supra; *Burdine*, supra.

In the case at bar, Plaintiff established that she was qualified for her position. Defendant Ken Combs admitted in his deposition that Plaintiff was qualified for her position. (See Record Vol. II, pg. 568, lines 21-25)

Plaintiff has proven that the reason Defendants gave for terminating her (poor performance) were pretextual in nature since: (1) Defendant Combs wrote a letter of commendation a month prior to Plaintiff's termination stating that Plaintiff was doing an *"outstanding"* job as its city prosecutor; (2) that defendants have failed to produce into evidence any adverse job evaluations against Plaintiff; (3) that defendants have failed to produce any disciplinary actions taken against Plaintiff during her tenure as city prosecutor; and (4) where plaintiff has entered into evidence her court record which rebuts the allegation of *poor performance*. (See Record, Vol. II pg. 598)

Defendants have not established, by demonstrable evidence, that in the absence of discrimination, Plaintiff would still not have been retained as the city's prosecutor. See, *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

Therefore, based upon the foregoing, Plaintiff has established a prima facie case of racial discrimination in the workplace.

CONCLUSION

Based upon the foregoing facts, federal statutes and case law, Petitioner respectfully requests this Honorable Court to receive this Petition for Writ Certiorari, grant a review on the issues presented and issue an opinion of reversal in accordance to the federal law. Petitioner is certainly aware that this Honorable Court has discretion to determine which cases it will review. Petitioner is not a public figure, famous, or controversial. However, Petitioner is an African-American female who believes in our United States Constitution as well as our judicial system. Petitioner believes justice shouldn't be afforded only to the famous, but to the ordinary hard working citizens of these United States. Plaintiff further believes that ultimate justice *shall* roll down like waters and righteousness like a mighty stream!

Therefore, Petitioner seeks justice for herself and other female attorneys desiring to work for Respondent city of Gulfport, Mississippi. Petitioner prays that the petition for a writ of certiorari be granted.

Respectfully submitted,

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Attorney and Petitioner

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

La Quetta M. Golden, Plaintiff - Appellant

v.

City of Gulfport, et. al. - Defendants - Appellees

Case No. 96-60562

ORDER, dated July 11, 1997, Before Politz, Chief Judge, Higginbotham and Smith, Circuit Judges

This matter is before the court on appeal by La Quetta M. Golden of an adverse summary judgment dismissing her Title VII, Equal Pay Act, racial and sexual discrimination and retaliatory discharge claims. Having considered the oral arguments, briefs of counsel, and pertinent parts of the record, and finding neither legal nor factual basis for any claim asserted by appellant, the judgment appealed is AFFIRMED at appellant's costs.

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* Pursuant to5th Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Circ. R. 47.5.4.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OFMISSISSIPPI
SOUTHERN DIVISION

La Quetta M. Golden, - Plaintiff

v.

City of Gulfport, et. al. - Defendants

Civil No. 1:96cv409GR

ORDER, dated July 25, 1996, Walter Gex,
United States District Judge

This cause is before the Court on motion of the defendants for summary judgment [98-1] pursuant to Rule 56 of the Federal Rules of Civil Procedure. Pursuant to the Memorandum Opinion entered in this cause, this date, incorporated herein by reference, it is hereby,

ORDERED AND ADJUDGED that the defendants' motion for summary judgment [98-1] be, and is hereby, granted; and that this case be, and is, dismissed. It is further,

ORDERED AND ADJUDGED that the parties shalleach bear their respective costs.

SO ORDERED AND ADJUDGED this the 25th day of July, A.D., 1996.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

La Quetta M. Golden, - Plaintiff - Appellant

v.

City of Gulfport, et. al. - Defendants - Appellee

Case No. 96-60562

ORDER, dated August 5, 1997, Before POLITZ, Chief Judge Higginbotham and Smith, Circuit Judges

IT IS ORDERED that the petition for rehearing filed in the above case is denied.